IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE THIRD DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

And
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 2485 of 2005

Between:

1 Union of India through Secretary, Ministry of Science & Technology, New Delhi.-110016.
2 The Surveyor General of India, Survey of India, Dehradun-248001

..... PETITIONERS

AND

Sh.B.Krishna Swamy S/o B.Papaiah, Deputy Director (Retired), Survey of India, Uppal, Hyderabad.500 039.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to Issue preferably a writ in the nature of Certiorari or any appropriate writ, order or direction, calling for the records pertaining to order dt. 28/09/2004 in OA.No.148/2004 on the file of Hon'ble Central Administrative Tribunal, Hyderabad Bench, Hyderabad and quash the same.

Counsel for the Petitioners: MR.A.RAJASEKHAR REDDY

Counsel for the Respondent: ----------

The Court at the admission stage made the following:

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ORAL ORDER: (per GB.J.)

The Writ Petition is filed assailing the order passed by the Central Administrative Tribunal (for brevity Tribunal) in O.A.No.148 of 2004, dated 28.9.2004.

2. The respondent herein was working as Deputy Director in Survey of India, Hyderabad. While so, a vacancy in the cadre of Deputy Director (Selection Grade) fell vacant consequent on the retirement of one S.K. Gupta with effect from 1.12.2001. Since the respondent was not promoted to the said post, he filed O.A.977 of 2003 and the Tribunal disposed of the said OA on 27.8.2002, with the following directions:

> "Respondents are directed to take a decision whether the selection grade vacancy was to be filled up or not. In case the respondents decided to fill up the vacancy, they could take necessary steps to convene the DPC at an early date."

However, it is noticed that the Government had decided to fill up the vacancy and accordingly the DPC was constituted on 16.10.2003 and it is stated that the DPC recommended the case of the respondent herein for promotion to Selection Grade Deputy Director. The proceedings of the DPC were communicated to the respondent on 24.12.2003, by which time the respondent obtained voluntary retirement from 7.11.2003 on the alleged ground that he became frustrated for not granting promotion to the Selection Grade Deputy Director. However, we are not concerned with the reasons for voluntary retirement of the respondent. Though the DPC cleared the case of the respondent for promotion, he was not given promotion and therefore he filed O.A.No.148 of2004 seeking direction to promote him with retrospective effect from 1.12.2001. The said OA came to be adjudicated by the Tribunal and allowed the same and directed the petitioners herein to give proforma promotion to the respondent herein retrospectively with effect from 1.12.2001 as the

vacancy arose upon the retirement of S.K.Gupta. The following is the relevant extract from the order of the Tribunal:

> "We, therefore, hold that the applicant is entitled for being given proforma promotion as Deputy Director, Selection Grade, in the pay scale of Rs.14,300-18,300/- retrospectively, w.e.f., 1.12.2001, when the said vacancy arose upon the retirement of Shri S.K.Gupta, who was the immediate senior to the applicant.
>
> The respondents are accordingly directed to give effect to the proceedings of the DPC held on 16.10.2003 w.e.f. 1.12.2001, after consultation with UPSC in this regard. This will give benefit not only to the applicant but to all other persons who were in the panel for promotion in the DPC held on 16.10.2003. Since, as directed above by us, UPSC will have to be consulted in the matter, we allow a time limit of four months to the respondents to implement this order, from the date of communication of this judgment, to give proforma promotion to the applicant w.e.f. 1.12.2001."

Against the said order, the present Writ Petition has been filed by the Central Government.

3. Mr.A.Rajasekhar Reddy, learned Senior Standing Counsel for Central Government submits that the order of the Tribunal is not sustainable. It is the discretion the Government whether to fill up the posts or not and the same cannot be enforced by the Tribunal. He would also submit that in pursuance of the order of the Tribunal, on earlier occasion the DPC was constituted on 16.10.2003 and the DPC had recommended the promotion of the respondent on 24.12.2003, but by that time the respondent herein opted for voluntary retirement and retired from service on 7.11.2003 and therefore the Tribunal ought not to have allowed the case of the respondent herein as by which time the communication was issued, he stood retired on voluntary basis.

4. We are unable to accept the contention of the learned Standing Counsel. The Tribunal has thoroughly considered the contentions of the learned Standing Counsel in its order, which reads thus—

> "It is found from the facts that it was clearly a default on the part of the respondents to have delayed the holding of the DPC. This fact has been admitted by the respondents at page 2 of their reply where they have stated that the DPC proposal for the applicant's promotion to the post of Director in the pay scale of Rs.14,300-18,300/- was initiated vide SG's letter dated 26.9.2002. But the

DPC could be convened only on 16.10.2003, as has been stated in the reply, i.e., after more than one year, and the out come of the DPC was received on 24.12.2003. The DPC of 16.10.2003 was a combined DPC held for the vacancies for the years 2001 and 2002. Since the applicant was not being allowed promotion to the selection grade, he became frustrated by such inaction on the part of the respondents and took voluntary retirement on 7th November, 2003.

We find that in the counter reply, the respondents have nowhere stated even a single word against the applicant. In fact the applicant was already empanelled for promotion by the DPC held on 16.10.2003, for which the result was received on 24.12.2003. It is also the case of the applicant in the OA, there was a clear cut vacancy in the post of Deputy Director, Selection Grade, in the scale of Rs.14,300-18,300/- from 1.12.2001 for the 8th vacancy. The applicant's seniority position was elevated to serial No.8 since his immediate senior, Shri Rohitash Kunwar, Deputy Director, Selection Grade, had retired. Since the mandatory time bound programme was in force, the applicant ought to have been promoted w.e.f. 1.12.2001 to the selection grade post, retrospectively, irrespective of the fact that the DPC was inordinately delayed".

5. It cannot be disputed that the Government have not taken a decision to fill up the post. Once it has taken a decision to fill up the post, it ought to have recommended the promotion of the respondent retrospectively. It is also on record that the post fell vacant consequent on the retirement of S.K.Gupta on 1.12.2001 and the DPC had cleared the case of the respondent on 16.10.2003, which goes back to the date when the vacancy arose. Thus, we do not find any illegality in the order passed by the Tribunal. We find no merit in the Writ Petition.

6. In the result, the Writ Petition is dismissed at the admission stage. However, we grant three (03) months to the petitioners herein to implement the orders of the Tribunal from today. No costs.

(G.BIKSHAPATHY, J.)

3rd March, 2005.

(P.S.NARAYANA, J.)

SSR

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Secretary, Ministry of Science & Technology, Union of India
New Delhi.-110016.
2 The Surveyor General of India, Survey of India, Dehradun-248001

3 The Registrar, Central Administrative Tribunal, Hyderabad.

4 2 CD copies

5 MR.RAJASHEKAR REDDY (SC FOR CG)

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